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sional committee on what retaliatory action, if any, he is proposing to take under the Foreign Missions Act.

The fact of the matter is that U.S. Embassies and consulates overseas are legally a part of the United States. No foreign country should be allowed with impunity to dictate to our Government who we may or may not use to build or improve the security of our diplomatic facilities.

MAKING IT POSSIBLE FOR MORE FIRMS TO COMPETE

Mr. President, the third amendment addresses provisions which effectively preclude many firms, especially smaller businesses, and any new companies from bidding on these projects.

The committee, in what I believe was an effort to try control quality, limited eligible contractors to companies who had been in business for at least 5 years and which had achieved a certain level of business volume. However, many of the companies involved in physical and technical security equipments and installations are evolving companies resulting from the recent upsurge in worldwide terrorism. The committee provision has the effect of precluding many of these newer companies from competing for contracts under this program. With less competition, the taxpayer will end up paying more.

My amendment solves the problem by reducing the 5 year requirement to 2 years and striking the business volume threshold.

SMALL BUSINESS SETASIDE

Mr. President, the fourth amendment establishes a setaside for small businesses, and now I quote from the amendment, "to the extent practicable."

The fact of the matter is that the State Department has a history of preferring to deal with a small number of favored suppliers for goods and services. Small businesses around the country who are not in favor find it almost impossible to successfully bid on State Department work.

My amendment attempts to address this problem by ensuring small businesses a percentage of the available work. At the same time, it provides the State Department with the flexibility to waive these provisions when absolutely necessary.

I might note that I expect the State Department to have good explanations if they fail to meet this requirement. As chairman of the Appropriations Subcommittee with jurisdiction over their budget, I intend to monitor their implementation of this provision carefully.

Mr. President, a very brief explanation.

As the committee bill is presently written, I believe that American companies will in general, have more difficulty in competing for contracts on the smaller projects.

Accordingly, these four amendments deal with enhancing the opportunities for American firms to do the kind of

construction that we are talking about in support of the diplomatic security initiative that this Congress is going to fund at a very high level this year. These amendments will enhance the opportunity of American companies, both large and small, to do that work.

It is also the purpose of one of these amendments to ensure that only American companies will compete for projects involving physical or technical security.

I believe that fairly describes the amendments, which have been cleared on both sides.

Mr. LUGAR. Mr. President, my distinguished colleague, the Senator from New Hampshire, has proposed four amendments which will assure further participation by American small business in the Diplomatic Security Program.

One of the most important objectives the Foreign Relations Committee had in drafting the amended version of H.R. 4151 was to see that American companies were involved in the program both for the economic benefit as well as the additional security it afforded the program.

The Senator's amendment certainly helps reach that objective.

I support the amendment on our side of the aisle and I am prepared to accept all four.

Mr. PELL. Mr. President, these are four excellent amendments.

Coming from the State where I do, where small business is really a great deal of all our business, I am glad indeed to recommend the passage of these amendments and commend the Senator from New Hampshire for having proposed them.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment (No. 2183) was agreed to.

Mr. LUGAR. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RUDMAN. Mr. President, let me express my appreciation to the chairman and ranking minority member of the Foreign Relations Committee and their staff working with us and working out these amendments and allowing us to present them at this time.

I am sure the small business community of America does appreciate that.

Mr. LUGAR. I thank the Senator.

AMENDMENT NO. 2184

The PRESIDING OFFICER (Mr. RUDMAN). Under the previous order, the hour of 2 p.m. having arrived, the vote will now occur on the Simon amendment.

The question is on agreeing to the amendment of the Senator from Illinois. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON: I announce that the Senator from Oregon (Mr. Packwood) is necessarily absent.

The PRESIDING OFFICER (Mr. PRESSLER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

(Rollcall Vote No. 150 Leg.)

YEAS—99

Abdnor	Glenn	McConnell
Andrews	Goldwater	Melcher
Armstrong	Gore	Metzenbaum
Baucus	Gorton	Mitchell
Bentsen	Gramm	Moynihan
Biden	Grassley	Murkowski
Bingaman	Harkin	Nickles
Boren	Hart	Nunn
Boechwilt	Hatch	Pell
Bradley	Hatfield	Presler
Bumpers	Hawkins	Proxmire
Burdick	Hecht	Pyron
Byrd	Heflin	Quayle
Chafee	Helms	Riegle
Chiles	Helms	Rockefeller
Cochran	Hollings	Roth
Cohen	Humphrey	Rudman
Cranston	Inouye	Sabates
D'Amato	Johnston	Sasser
Danforth	Kassebaum	Simon
DeConcini	Kasten	Simpson
Denton	Kennedy	Specter
Dixon	Kerry	Stafford
Dodd	Lautenberg	Stennis
Dole	Laxalt	Stevens
Domenici	Leahy	Symms
Durenberger	Levin	Thurmond
Eagleton	Long	Trible
East	Lugar	Wallop
Evans	Mathias	Warner
Exon	Matsunaga	Weicker
Ford	Mattingly	Wilson
Garn	McClure	Zorinsky

NOT VOTING—1

Packwood

So the amendment (No. 2179) was agreed to.

□ 1420

Mr. LUGAR. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2184

(Purpose: To provide for forfeiture of proceeds derived from espionage activities, and for other purposes)

Mr. STEVENS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for himself, Mr. DENTON, Mr. THURMOND, Mr. LEAHY, Mr. MURKOWSKI, Mr. D'AMATO, Mr. BOREN, Mr. LAXALT, Mr. ZORINSKY, Mr. MCCONNELL, Mr. ARMSTRONG, Mr. DURENBERGER, Mr. MATTINGLY, Mr. LEVIN, Mr. ANDREWS, and Mr. LUGAR proposes an amendment numbered 2184.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

At the appropriate place, insert the following: Section 794 of title 18, United States Code, is amended by inserting at the end thereof the following:

"(d)(1) Any person convicted of a violation of this section or of any other felony in violation of the provisions of this chapter shall forfeit to the United States, irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

"(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section or of any other felony in violation of this chapter, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

"(3) The provisions of subsections (b), (c) and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)-(o)) shall apply to—

"(A) property subject to forfeiture under this subsection;

"(B) any seizure or disposition of such property; and

"(C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.

"(4) Upon motion of the United States attorney made at any time after conviction of a person at a trial conducted under chapter 47 of title 10 with respect to convictions under sections 904 (article 104), 906 (article 106), 906a (article 106a), and for convictions under section 934 (article 134) that incorporate provisions of this chapter, a court of competent jurisdiction shall, if the court determines that the interest of justice so requires, order such person to forfeit to the United States all property described in paragraph (1) of this subsection.

"(e)(1) Upon the motion of the United States attorney made at any time after conviction of a defendant for a violation of this section, for any other felony in violation of this chapter, or for an offense described in subsection (d)(4) of this section, and after notice to any interested party, the court shall, if the court determines that the interest of justice so requires, order such defendant to forfeit to the United States all or any part of proceeds received or to be received by that defendant, or by a transferee or that defendant, from a contract relating to the depiction of such offense in a movie, book, newspaper, magazine, radio or television production, or live entertainment or presentation of any kind, or from a contract relating to an expression of the convicted person's thoughts, opinions, or emotions regarding such crime.

"(2) An order issued under this subsection shall require that the party with whom the defendant contracts pay to the Attorney General any proceeds due the defendant under such a contract.

"(3) Proceeds paid to the Attorney General under this subsection shall be paid into the general fund of the Treasury of the United States.

"(4) As used in this subsection, the term 'interested party' includes the defendant, any transferee of proceeds due the defendant under the contract referred to in paragraph (1), and the person with whom the defendant has contracted.

"(f)(1) The Attorney General of the United States, at his discretion, is authorized to pay an amount not to exceed \$100,000 as a reward for information—

"(A) leading to the arrest or conviction of any person for—

"(i) the commission of a felony in violation of this chapter or for a conspiracy or attempt to commit such an offense; or

"(ii) an offense described in subsection (d)(4) of this section, or for a conspiracy or attempt to commit such an offense; or

"(B) leading to the prevention, frustration, or mitigation of the effect of a felony in violation of this chapter or of an offense described in subsection (d)(4) of this section.

"(2) The Attorney General or the designee of the Attorney General shall determine whether an individual furnishing information described in paragraph (1) is entitled to a reward under this section and the amount to be paid, except that the authority to pay a reward of \$10,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, or the Director of the Federal Bureau of Investigation. A determination made by the Attorney General or the designee of the Attorney General under this subsection shall be final and conclusive, and no court shall have jurisdiction or power to review such determination.

"(3) No officer, employee, or member of the Armed Forces of the United States or of any governmental entity who, while in the performance of his or her official duties, furnishes the information described in paragraph (1) shall be eligible for any monetary reward under this subsection, except that a person who acts with official approval as an undercover source or informant, when it is not a part of that person's normal official duties to do so, may be eligible for such a reward.

"(4) There are authorized to be appropriated such sums as are necessary for the payment of rewards under this subsection except that no funds may be appropriated for this purpose prior to fiscal year 1987."

Mr. STEVENS. Mr. President, the amendment I present to the Senate addresses what I consider to be a serious problem that faces our Nation, the question and the problem surrounding espionage.

I introduced S. 1654 on September 17 of last year to attempt to respond to that problem and that bill was pending before the Judiciary Committee for some time. It is now before us.

I offer this amendment on my behalf and also Senator DENTON, who worked very hard to get the bill out of the Judiciary Committee, as well as Senators LEAHY, MURKOWSKI, D'AMATO, BOREN, LAXALT, ZORINSKY, THURMOND, MCCONNELL, LEVIN, ANDREWS, MATTINGLY, ARMSTRONG, and DURENBERGER.

There are at least 41 cosponsors to the basic bill. Unfortunately I have been unable to contact all of them before today so I ask unanimous consent the remainder of the list be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

Senators Domenici, Helms, Simpson, Glenn, Nunn, Hatch, Chiles, East, Chafee, Gorton, Kasten, Rudman, Goldwater, Garn, Bumpers, Byrd, Boschwitz, Exon, Nickles, Hawkins, Roth, Gore, Abdnor, Grassley, Quayle, and Symms.

Mr. STEVENS. This legislation, Mr. President, is not too complicated. It addresses the problem of spies, spies who have been selling information concerning the security of our country and have been profiting from that action.

It would deny spies the proceeds of the sale of the information. It would deny spies any royalties from the sale of any story pertaining to their activities, and it would allow rewards for those who turn in information which leads to the apprehension of spies.

By taking away the proceeds of espionage and confiscating property used to commit espionage, we will not just be punishing those convicted of espionage; we will make them think twice about entering into the career of spying for profit.

I believe that we can make it harder for people to get their hands on information of this type. We can try to improve detection methods and we will take various steps to increase security.

However, until we take away the motivation which has been present, that is the financial aspects of spying, we will not be able to stop what has been going on.

Our real job, I think, is to let everyone know that no one in this country will be allowed to profit from espionage.

This legislation will allow the confiscation of any of the proceeds of the sale of the spy story, that is of the spy himself or herself.

The public, I think, has a fascination with spies and espionage but infamy should not be the foundation for a public career or for financial success.

I really believe that it is time for us to act to prevent this type of situation from developing in our country. It is a growing threat to our national security.

Since 1945 there have been 65 prosecutions relating to espionage. Since 1982 the FBI has arrested 25 individuals for espionage; 18 have been convicted and six cases are still pending. This 4-year total is the highest rate for arrest and convictions for espionage charges since World War II. I think the figures speak for themselves.

The lure of money is taking people into espionage. It is attracting too many people and this prime motivation is sheer greed.

Law enforcement officials responsible for investigating espionage cases recognize the common denominator in these cases has become the search for profit. To quote Bill Baker, assistant director of the FBI, "It says in the KGB manual, 'Americans can be bought.'"

We are all aware of the Walker family spy case. We are actually fortunate that John and Michael Walker reached a plea bargaining agreement. This gives us the opportunity to answer questions about just how serious the damage done by the Walkers

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has been. The Walkers, however, are not alone in their infamy—by any stretch of the imagination. They have been joined in the headlines recently by Ronald Pelton and the Pollards.

There have been several serious cases in the last few years. The problem of U.S. citizens selling off national security information is best illustrated by a few examples.

Joseph Helmich was arrested on July 15, 1981, on charges of selling top secret information about a cryptographic system to Soviet agents. He was awarded the honorary rank of Colonel in the Soviet Army, and received \$131,000.

David Barnett, a former member of the CIA's Directorate of Operations, pleaded guilty on October 29, 1980, to a charge of selling classified information on CIA operations to the Soviet Union. He admitted to receiving \$92,600 for this information, and may have been paid an additional amount to try and secure a staff position with the Senate or House Intelligence Committees.

William Bell, a former employee of Hughes Aircraft Corp., was arrested on June 28, 1981. He was charged with espionage in connection with the sale of documents to the Polish intelligence service, for which he received approximately \$110,000.

James D. Harper was arrested October 15, 1983, for selling missile data to a Polish agent. Harper reportedly was paid over \$250,000. He pleaded guilty to one count of espionage, and was sentenced to life imprisonment on May 14, 1984.

In this sampling—which is far from exhaustive—there is a common factor which dominates each case. These individuals were paid fairly large sums for classified information. Each of them exchanged a portion of our national security for their personal gain.

We all recognize that it is time for Congress to do something about what has become a pervasive problem. This is by no means the only response I expect us to make to espionage. However, I believe this to be a major step in the right direction. If we discourage individuals from selling information we remove the incentive to commit espionage. I propose that we use the profit motive against these perpetrators. This legislation would confiscate the proceeds of espionage activity, and turn the tables on spies by paying those who provide information on their activities.

The tool we would create with this legislation to fight espionage is very similar to one available to drug enforcement agents. This is very appropriate, since the motivation to commit espionage and to deal in drugs is very similar. In both cases, the perpetrator cares little for the consequences of his actions. The reason for being in the business is to make money—at any cost, no questions asked. It is an embarrassment to our society.

It is now apparent that one of the best ways to strike at drug dealers is by taking away the profits of their business. Even though spies are inspired by a similar desire, the amounts of money we are talking about are decidedly smaller. At the same time, the harm being done is much greater. Drug use is a plague in this country, but espionage threatens the nation's survival.

Taken as a package, I believe this proposal provides a fairly complete response to the prime motivation of espionage. It is carefully drafted so that it affects only those convicted of espionage felonies. The power to grant rewards is carefully limited to avoid abuse and excess. This is a good piece of legislation—one that demands action now. To put it off any longer could doom this proposal as time runs short later this year.

In my judgment, it is time for Congress to do something about this problem. I think the Senate knows that I have other legislation pending which I think is sort of old fashioned, but I believe spies just ought to be shot. As a matter of fact, the Senator from Arizona told me just now he thinks they ought to be hung using a loose rope.

I do not think there is anything about our system in the United States today that infuriates me as much as the increasing tendency of Americans to spy on their own Government and to do so because of the motivation of profit.

It is time for us to take a major step to discourage individuals from selling information, and if we do so, I think we will take action to remove the incentive to commit the espionage in the first place.

As I said, this amendment would confiscate the proceeds of espionage activities and turn the table on those who spy against their own country by paying individuals who provide information on the spying activities. The tool we would create with this legislation to fight espionage is very similar to that we are using in the drug enforcement area.

I think the Senate is well aware of that.

Mr. ANDREWS. Will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr. ANDREWS. I appreciate my colleague yielding and I am proud to join him in this effort because of all the kinds of heinous acts against our people, the selling-out of our Nation's secrets for profit is perhaps the worst.

You can talk about ideology, you can talk about people who disagree with what is going on within the Government, you can talk about general spying. They are all bad enough. But spying for pay for those 40 pieces of silver has absolutely no place, Mr. President, in this society of ours. Spying for profit, selling out your friends, your family, your neighbors, for a few dollars is the worst, the most

treasonable act anyone can engage in against our people.

I would hope that we would be able to put this kind of stiff regulation in wherein we would confiscate any of the profit, any of the profit from writing the books or taking part in a movie later on, celebrating this great spy case or whatever it might be. Not only that, but I am totally inclined to go along with my colleague when he quotes our colleague from Arizona in saying, "These are the kinds of people who ought to be shot because there is absolutely no justification for spying, for espionage, for profit."

I applaud my colleague for introducing this amendment. We cosponsored the legislation. It would be my hope that the leaders of the debate of this bill will accept this amendment because it is long overdue.

Mr. STEVENS. Mr. President, I thank the Senator from North Dakota. He has been in the forefront of those who have tried the assist to work out this legislation. I think we should mention Senator DENTON, who has worked very hard to see to it that the legislation be brought to the floor.

There is no question about it that we are now dealing with a different phenomenon in our country with this increased activity of espionage for money.

I have introduced legislation to make certain that that kind of activity, espionage for profit against our own Government, is considered treason.

□ 1430

I consider it to be treason and I think the country believes it is treason. This amendment has been carefully drafted. It does not affect those people who go out and study the activities of a convicted spy and present to the country the story of that type of activity. What it does is prevent the person who is convicted of espionage from profiting from the act and forfeit whatever that person received in connection with the espionage activity.

There is no reason to allow them to keep their ill-gotten gains and there is no reason to allow them to sell for any purpose the story of their actions.

Mr. President, I hope that the Senate will adopt this amendment. It is time for us to take this action, particularly in view of the number of cases that are pending right now in which substantial sums will be retained by those who have been involved if Congress does not act.

Mr. MURKOWSKI. Mr. President, as a member of the Senate Select Committee on Intelligence I am acutely aware of the problem of espionage against the United States. Soviet bloc intelligence services spare no effort or expense in a relentless effort to steal scientific, technical, and defense secrets from the West. A single technical document can save Moscow years and hundreds of millions of dollars in re-

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search and development. Super-sophisticated U.S. intelligence systems, upon which our security depends, can be compromised in a few minutes by a traitor with special knowledge. Any reader of the newspaper in recent weeks knows these are not hypothetical possibilities; they are case histories.

We have seen the emergence of a new breed of spy, unscrupulous mercenaries willing to sell out their country for cash. Spying has become a lucrative business. Men like Walker and Whitworth apparently received hundreds of thousands of dollars for the information they provided. Walker, now that he has been caught, has embarked on a new money-making scheme to sell his story to a publisher. The more notorious the author, the fatter the royalties.

Why should espionage pay? It should not, and passage of the amendment will make sure it does not. It is time to make it abundantly clear that there will be no opportunity for the Walkers and their ilk to keep their ill gotten gains. Espionage is not fun and games. Anyone contemplating spying against this country must know that there will be no pot of gold at the end of the rainbow—only a very long stay in prison.

Mr. President, the amendment offered by Senator STEVENS is right on point. It prevents spies from taking advantage of their illegal activities, and says that spies cannot profit by receiving financial rewards from book royalties, movie rights, and similar arrangements. Clearly, Mr. President, the Senate must say loud and clear that spies cannot become "media stars" from their illegal activities. I urge my colleagues to support this important amendment. ●

● Mr. DENTON. Mr. President, I rise in support of the amendment offered by my distinguished colleague from Alaska (Mr. STEVENS) which incorporates the substance of S. 1654. The original bill, which was unanimously approved by the Judiciary Committee on June 12, 1986, will amend title 18 U.S.C. to provide for criminal forfeiture of proceeds derived from espionage activities and rewards for information providing information leading to arrests in espionage cases. I commend Senator STEVENS for his leadership in this area and I am only too happy to join as an original cosponsor of this amendment.

Mr. President, recent events surrounding the Walker and other espionage cases have made it abundantly clear that the threat of espionage is real and pervasive. The Soviet Union, its client-states, and other hostile countries have a massive effort underway in this country to amass large amounts of material about our military secrets and technology.

The foreign intelligence-gathering in the United States has caused untold damage to our national security. The technological lead enjoyed by the

United States in certain defense-related areas has been seriously eroded by the foreign success in obtaining classified scientific and technical information. In addition, spying has cost our country billings of dollars in stolen technology and military secrets. To reverse the trend, we must remove the financial incentive for those persons who would assist these foreign spies by engaging in espionage activity.

This amendment will remove the financial incentive and will aid in the battle against espionage. The amendment contains three separate provisions.

First, it requires that convicted spies forfeit all proceeds from their espionage activities by incorporating by reference the forfeiture provisions contained in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. section 853);

Second, it requires that any proceeds from publication or television rights to the story on, or interviews of, convicted spies be forfeited (Mirroring the Son-of-Sam provisions contained in 18 U.S.C. section 3671);

Third, it establishes a new fund to reward those whose information leads to the arrest or conviction of spies (mirroring the rewards provision contained in the Rewards for Information Concerning Terrorism Act, 18 U.S.C. section 3071).

Mr. President, I am pleased that Senator STEVENS has accepted, at my suggestion, language which will make the provisions of the amendment applicable to members of the Armed Forces convicted of espionage pursuant to the Uniform Code of Military Justice, as well as those individuals convicted under title 18 of the United States Code.

This amendment represents a necessary tool in our fight against espionage. I urge my colleagues to support it. ●

Mr. LEAHY. Mr. President, I am pleased to be an original cosponsor of this amendment. Simply stated, it will apply existing Federal procedures for forfeiture of criminal proceeds, and rewards for informants, to espionage cases.

We have all been shocked by the wave of espionage cases that have occurred in the Defense Department, among Defense contractors, and even in the intelligence agencies. Perhaps the most ominous development was revealed in the Walker case. Whatever other factors may have motivated John Walker to betray his country's defense secrets to the Soviet Union, his cynical attention appeared to focus primarily on the money he stood to make from his activities.

This amendment squarely addresses the ill-gotten gains from espionage and the incentive to turn in those suspected of this crime. It will be a useful contribution in our effort to see to it that espionage will never be seen to pay, and that those actually or contemplating spying for foreign powers

recognize that others could be rewarded for providing information that leads to their arrest.

I want to congratulate Senator STEVENS for his initiative, and Senator DENTON, chairman of the Subcommittee on Security and Terrorism, who worked closely with me on the Denton/Leahy substitute which became the final draft of this bill.

Mr. MATHIAS. Mr. President, will the Senator yield for a question?

Mr. STEVENS. I yield for a question to the Senator from Maryland.

Mr. MATHIAS. My question arises from the so-called Son of Sam provision of this amendment, which would prevent persons convicted of certain espionage offenses from profiting by writing about their crimes. It is surely a repulsive spectacle when an individual profits from the commercial exploitation of his crimes against the United States, and I am in complete sympathy with the Senator's effort to divert that profit stream. Nonetheless, I am also concerned about the degree to which any "Son of Sam" provision burdens the exercise of first amendment rights. Am I correct in my understanding that this amendment is modeled after the "Son of Sam" provision that Congress enacted in the Comprehensive Crime Control Act of 1984, and that now is codified at 18 U.S.C. section 3671?

Mr. STEVENS. The Senator is correct. I am offering this legislation so that the forfeiture remedies that were made available to the Government in the Comprehensive Crime Control Act of 1984 with respect to crimes of violence can be used against those who are convicted of violating certain specified espionage statutes.

Mr. MATHIAS. Am I also correct that it is not the Senator's intent to inhibit in any way the right of a third person to write or publish an account of the crimes that a convicted spy committed against the United States?

Mr. STEVENS. The Senator is correct. Let me quote from a portion of the Judiciary Committee's report on the 1984 "Son of Sam" legislation. I am confident that it will help clarify the scope of the forfeiture provision that I am offering:

... the [] amendment refers to money payable to the defendant's "transferee," rather than "any other party." This is to ensure that innocent third parties, such as Truman Capote, the author of "In Cold Blood," or other authors who have not participated in criminal conduct and who wish to depict the defendant's crime, are not affected by the proposed rule change. (S. Rep. No. 98-497 at 6.)

The "In Cold Blood" example is instructive here, since the corresponding provision in this legislation is not intended to reach an innocent third party who was not convicted of espionage when that third party writes or publishes an account of the events surrounding the espionage offense. It would apply to any proceeds due to the convicted spy or any part of the

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convicted spy's share that he has diverted to some third person.

Mr. MATHIAS. I thank the Senator from Alaska for that clarification. I have one additional question. One of the statutes covered by this amendment is 18 U.S.C. 793. As the Senator knows, an important case under that statute was recently concluded in my home State of Maryland. In that case, the jury convicted Samuel Morison of providing certain classified photographs to Jane's Defense Weekly.

I raise this point because the prosecution of Mr. Morison under section 793 is unprecedented, has wide-ranging first amendment implications, and is currently on appeal. In other words, the law in this area may be in a state of flux. Would the Senator's amendment have any effect on the substantive reach of section 793?

Mr. STEVENS. It is not my intent to affect in any way the definition of the underlying offenses to which this legislation would apply. Thus, this legislation should have no impact on the judicial interpretation of section 793. It would simply provide the Government with the opportunity to seek an additional remedy against someone finally convicted under that statute.

Mr. MATHIAS. I thank the Senator from Alaska.

Mr. STEVENS. Let me amplify the comments I have just had with Senator MATHIAS to emphasize again that this is not any attempt to invade the other areas of the Federal Code. Nor is it an attempt to in any way prevent a third party from engaging in the business of writing either for the print media or for the air or television media the stories of those who have been involved in these kinds of activities.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I am pleased to answer any questions my colleagues may have.

Mr. METZENBAUM. Mr. President, I do not think any of us would speak in opposition to the amendment of the Senator from Alaska with respect to the forfeiture of funds gained from espionage or from writing relative to that or removing pictures. I think we all support that concept. This language is, I think, identical with language that has been in the Judiciary Committee for several weeks.

We have been wrestling with one aspect of the problem I would like to discuss with my colleague from Alaska. That has to do with the question of the right of a defendant to have legal counsel and the concern that has been expressed that assumes the individual did engage in espionage or it was alleged that he did and then he hires counsel. As I understand it, under this provision, those funds that would have been paid to counsel could be forfeited as well. As a consequence, the individual might not be in a position to be represented by a lawyer. He is not guilty until he is found guilty.

I wonder whether or not it is the intent of the author of the amendment to preclude the right of the defendant to have legal counsel, even though it very well might be that some portion of those funds would be expended for legal counsel. Some thought has been given to giving the judiciary, the judge handling the case, some discretionary authority in connection with this subject. Would the Senator from Alaska care to indicate his thoughts on that subject?

Mr. STEVENS. Mr. President, we have no intention of changing the normal treatment of attorneys' fees in such circumstances. If an attorney has reason to know that his client is paying him the proceeds that he has obtained by committing a crime, then the money in the hand of the attorney is forfeitable. If he does not have reason to suspect that, then it is another matter.

It is my understanding that this has been handled this way in other circumstances. It does not come up just in connection with this case. If a person robs a bank and is on trial and the lawyer who is defending that person knows that the money he has received is part of the loot from the bank, he cannot keep that. I think those of us in our profession understand that full well. We are not seeking to change that.

Mr. STEVENS. I say to my friend from Ohio, I understand what he is saying. I have no intention of changing the normal treatment of attorney-client relationship nor the right of the attorney to be paid. Unless he has reason to believe that the money he receives is part of the proceeds of the crime, we do not affect his status.

Mr. METZENBAUM. I appreciate the comment of the Senator from Alaska. I think it goes most of the way to the thing about which I have concern. But let us assume for the moment that the attorney were to know where the proceeds came from but that for a host of other reasons, he was convinced that the defendant was not guilty. The man might have the money but he might not be guilty for any one of a number of reasons, including the conceivable reason of statute of limitations, that it was out of the jurisdiction of the court, that there was some violation of his rights as to how the information was obtained, that there was an unlawful search and seizure.

I am not trying to make out a case for any particular individual, but my colleague and I are both lawyers. I think we would both agree that a lawyer would not be held responsible or should not be called upon to make a judicial determination as to whether his client is or is not guilty.

I think it is reasonable to assume that the lawyer taking the individual's case is taking it on the basis that he—assuming he is going to put in a "not guilty" plea—that he in his mind feels that there is a chance of having the

defendant found not guilty. All I want to do is let the individual, whoever he may be—whether he is accused of the most heinous crime, and certainly espionage has to be included in that category—to let that individual have legal counsel. Some have suggested that the courts could appoint counsel, but I think we would agree that if the individual had funds, and certainly substantial funds, it would not be reasonable to expect that the court would appoint counsel.

I have that one reservation concerning the Senator's response, which indicated that if he knew the man was guilty or where the money came from. I think he has practiced law long enough and I have practiced law long enough to know that nobody is guilty until the court has found the individual guilty and that every person has the right to have his day in court.

Mr. STEVENS. Mr. President, we have been in the practice of law for a long time, and I was the Government attorney in my State for 3 years, and I know some of these issues come up in a hard way.

I say to the Senator from Ohio that they cannot come under this amendment in any more difficult circumstances than they do in a drug situation today with all the drug cases we see, with tremendous funds being received by those peddling drugs. When we do apprehend them, we regain some of that money. We find that the defendant has received money and upon conviction, there are existing statutes which allow for forfeiture. As a matter of fact, this bill, as the Senator knows, is patterned after the drug statute that requires the forfeiture of the money received by the defendant who has been convicted of violating the law relating to drugs.

I say to my friend that this amendment before us does not require a forfeiture until conviction and it puts in the hands of the court that imposes the sentence the duty to order the forfeiture to the United States of the property we have listed as being subject to forfeiture. It is similar, as I said, to the drug statute.

Mr. METZENBAUM. I know it cannot cause a forfeiture of attorneys' fees as such. That is not indicated by implication or otherwise. Am I correct in my understanding?

□ 1440

Mr. STEVENS. The Senator is correct in the sense that we, of course, are not trying to require that—but if the court, following the normal procedures, would find that the attorney had knowledge of the source of the moneys he received, the court could order forfeiture of the moneys in the hands of the attorney in whole or in part, depending on what the court decides under the circumstances. But it is the Comprehensive Drug Abuse and Prevention and Control Act that has been the guide and it does, as I said,

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deal with the forfeiture of such funds that have been received and gives the authority to the court to order such other disposition of the property as it sees fit.

I think we have to leave this issue, Mr. President, where it has been in the past, and that is with the judge who presides over the case. Obviously, what the Senator from Ohio says is right, that until conviction the attorney is not in any way in a position of facing a forfeiture of moneys that have come into his hands as a result of his relationship with the defendant. But if he has knowledge and it can be shown and the court decides the attorney had knowledge the money the defendant delivered to him was received from proceeds of espionage or the proceeds of selling drugs, they are treated the same. It is up to the court to determine what should be forfeited under this statute.

Mr. METZENBAUM. Is it my understanding that the amendment of the Senator from Alaska is intended to be interpreted in the same manner the courts have interpreted the drug-related cases?

Mr. STEVENS. That is correct.

Mr. METZENBAUM. I have no further questions, Mr. President.

Mr. LUGAR. Mr. President, as a cosponsor of the amendment, I certainly commend the distinguished Senator from Alaska for a very important amendment. On our side, we are prepared to accept the amendment.

Mr. FELL. Mr. President, the colloquy between the Senator from Alaska and the Senator from Ohio cleared up one of the problems that might have been with us in approving this amendment. We think it is a good amendment and, as far as I know on my side, there is no objection to it. I recommend we go forward.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2184) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LUGAR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I thank the Senator from Indiana and the Senator from Rhode Island. I appreciate the contribution the Senator from Ohio has made to the legislative history on this amendment.

Mr. LUGAR. I thank the Senator.

Mr. President, I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

□ 1450

Mr. LUGAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF DANIEL A. MANION

Mr. LUGAR. Mr. President, I want to take a moment to express the strong support I have for Dan Manion, who is being considered for an important judgeship. There will be a vote held on this floor tomorrow afternoon on cloture, so that we might proceed to a vote on Dan Manion.

He is a Hoosier, which means a resident of the State of Indiana. Beyond that, he has served in a distinguished capacity for 4 years as a State senator. He was elected in the South Bend area to that seat. I have known him, have campaigned with him, have been involved with him in politics in South Bend and have a very good idea of the support on both sides of the aisle that Dan Manion enjoys from both Democrats and Republicans. He has that support in his home town, which is a sizable city, a complex city, a city in which the votes are narrowly divided between Democrats and Republicans, in which independent voters have cast their lot with people of quality.

Mr. President, in my association with Dan Manion, I have found him to be a person of vigor, of character, and of intelligence. Very clearly, in his work in behalf of the people of the State of Indiana, he has demonstrated qualities which have led to very strong support in our State and very strong support from many persons around the Nation for his nomination.

I mention all this because there has been, I have noticed, a national campaign of persons who are not so well acquainted with Mr. Manion. I appreciate the nature of the argument that is being made. In short, many persons around the country believe that Dan Manion is a conservative and some believe he is too conservative for the courts and for issues that he might consider.

I think it is a misfortune that the issue has been cast in this mold. I appreciate that others have said that that really is not the issue. We are not persuaded that persons are either too conservative or too liberal but, rather, we are talking about competence. We are talking about specific opinions that have been written. We are talking about specific activities as part of legislative and administrative abilities.

Mr. President, I say in all candor that those who are attempting to make a case on the basis of competence have had to stretch very far. As a matter of fact, Dan Manion is a very competent human being, a very competent public servant, a person, I believe, of extraordinary force as he has presented conservative ideas in the State legislature—some of them adopted, some of them not. Clearly, he has acquitted himself well. I know of no one in Hoosier politics who ever thought he lacked confidence or lacked the ability to handle himself well in public life and with public issues.

Mr. President, I hope that as we take a look at this vote on cloture tomorrow, we take a look at another issue, and that is basic fairness to a nominee, a nominee for a very important office. In my judgment, most Americans believe that Mr. Manion ought to receive a vote up or down on the basis of his record, on the basis of the President's nomination of him for this high position.

I appreciate that legal scholars have been combing through the years to try to find if there is a single other instance in which a nominee for a judgeship has been blocked on the Senate floor by extended debate or filibuster. That instance, I think, for the particular office Mr. Manion seeks, has not been found, and for good reason.

Senators, whether Republicans or Democrats, believe in fairness. They believe in taking a look at the man or the woman, the nominee; the President who has made the nomination; the circumstances of that nomination.

I hope that precedent will prevail again, that there will be a strong vote for cloture, so that the debate can proceed after tomorrow on the merits of the case.

Senator DAN QUAYLE of Indiana and I, as those who are happy to count Dan Manion as our constituent, look forward to making a strong case on the merits for this nominee, the nominee of the President, for whom we have great respect.

□ 1500

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1510

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. McCONNELL). Without objection, it is so ordered.

AMENDMENT NO. 2185

Mr. MATHIAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an amendment numbered 2185.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place insert the following: